

## Annex V

11/07/01 10:11:04 FAX NO 88341 2007

### MALAWI HUMAN RIGHTS COMMISSION



#### PRESS RELEASE

#### **RECENT DEVELOPMENTS IN THE NATIONAL ASSEMBLY CONCERNING THE INDEPENDENCE OF THE JUDICIARY**

The Malawi Human Rights Commission has noted with concern the recent developments in Parliament concerning the intended motion of the impeachment of three High Court Judges on the grounds of incompetence and misbehaviour.

The Commission, being an independent institution established under section 129 of the Constitution to protect and promote human rights, finds it imperative to express its profound concern at the Legislature's intention to remove the three justices.

The Commission calls upon all political leaders, members of parliament and all Malawians to uphold the rule of law, constitutionalism and the respect of the doctrine of separation of

The Commission further notes that if judges continue to be harassed, threatened and compelled to tow political lines, the enjoyment of democracy and human rights would be highly compromised and therefore threatened.

The Commission observes that any act that threatens judicial independence in order to achieve political goals would lead the country into dictatorship and anarchy which is counter productive in the enjoyment of the people's political, social and economic rights.

It is the Commission's view that Malawians cannot afford to revert to dictatorship especially after a hard worn fight against the one party tyranny. The new political dispensation that ensures freedom and respect of human rights must be nurtured in order to sustain a culture of human rights and good governance for the betterment of our country.

The Malawi Human Rights Commission therefore looks at the action by Parliament as a way of influencing the judiciary to dispense justice the way politicians would wish it to be dispensed and not on the basis of law and fact as is required. The Commission holds the view that to do so would entail the destruction of the doctrine of separation of powers and judicial independence thereby bringing the country to a state of lawlessness and bad governance.

The Commission therefore calls upon the legislature to withdraw any intended acts of impeachment, threat or intimidation to the judiciary to ensure that the constitutional order that embraces good governance, democracy and respect of rule of law which Malawians fought for in 1993 is maintained in the country.

Dated this 6<sup>th</sup> November, 2001

A handwritten signature in black ink, consisting of several loops and a final flourish, enclosed within a large, hand-drawn oval.

Rev. Fr. Alfred D. Nsope

**CHAIRPERSON**

DT 5.11.07

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## **PRESS RELEASE**

# **JUDICIAL INDEPENDENCE**

The Malawi Law Society has noted that motions for the impeachment of several Justices of the High Court have been moved in the National Assembly and that the affected Justices have been notified to attend and follow the proceedings of the National Assembly.

The Society wishes to express its profound concern at the attempt to subvert the Constitutional Order of Malawi. The basic constitutional order of Malawi provides for three critical branches of the government. These are the Legislature, the Judicial and the executive. The executive and the legislature are the political branches whilst the Judiciary is the non political branch. Its major constitutional function is to ensure that the other two branches operate in accordance with and subject to the requirements of the Constitution and the law.

For the judiciary to function effectively it requires to be independent and to be subject to no influence from the other two branches.

The moves to impeach the Justices of the High Court are based on allegations that one sat after hours to grant bail; another decided that the Speaker of the National Assembly is not above the law and his decisions can be challenged in Court and the last one wrote an article over a year ago when he was attending College outside Malawi commenting on the general elections.

The Society, after examining the petitions for impeachment, is compelled to bring to the attention of the nation that:

In law a Judge can sit any time of day or night and any day of the week in order that justice should be accessible to the people at all times. There can be no case for misconduct based on the allegation that the Judge sat and made a decision after hours. Courts in Malawi have sat at night before and on weekends and will certainly do so in future.

The decision by one Justice that the office of the Speaker was not above the law cannot be misconduct. The Malawi Supreme Court itself has made similar decisions and the Justice concerned apart from what the Constitution states found himself bound to follow the opinion of the Supreme Court on the point. It is not

judicial misconduct for a Judge not to decide in favour of the Speaker or the government generally.

The allegation that the Judge's analysis of the electoral process was intended to influence the decision of another Judge who was dealing with a case on the meaning of the term 'majority of the electorate' as used in the Constitution is of questionable validity. To begin with, the accusation comes over year after the article; Secondly the article if read in an unemotional manner points out issues which required the attention of the electoral commission. Thirdly the article was written at a time when the justice was not exercising active judicial duties. There is also the fact that all persons including judges as private individuals are entitled to freedom of expression.

The action of the National Assembly, if persisted in, will have the undesirable result of compelling any Justice or other Judicial officer to decide cases not on the basis of the matters relevant to the cases before them but on considerations of how the national Assembly and the political party or parties with majority control would wish particular matters to be decided. That would spell the end of judicial independence in Malawi which the people are constitutionally entitled to.

The **MALAWI LAW SOCIETY** calls on the national Assembly to withdraw the motions and to desist from taking any further step on the motions. Damage has already been done to the independence of the Judiciary in that the threat of dismissal has already sent a negative message to all members of the Judiciary. The National Assembly should take time to repair the damage already done and to assure the nation and the Judiciary of its commitment to the independence of the Judiciary.

The **MALAWI LAW SOCIETY** warns that should the judiciary feel intimidated and unable to decide matters brought before it on merit, the seeds for constitutional dictatorship would have been sown. The democratic norm will not survive and a return to the order of things which Malawians rejected in 1993 would become reality.

Dated this 4th day of November, 2001.

**PATRICE NKHONO**  
**VICE PRESIDENT**  
**MALAWI LAW SOCIETY**